

STATE OF NEW HAMPSHIRE
DEPARTMENT OF LABOR
CONCORD, NEW HAMPSHIRE



V
Charles Gordon Insurance Group Inc

DECISION OF THE HEARING OFFICER

Nature of Dispute: RSA 275:43 I unpaid wages
RSA 275:43 V unpaid vacation pay

Date of Hearing: February 29, 2016

Case No.: 52109

BACKGROUND AND STATEMENT OF THE ISSUES

The claimant originally asserted, through the filing of her wage claim, that she was owed \$2,250.00 for three weeks of unpaid vacation pay.

At the hearing, she clarified she is seeking two weeks of vacation pay and one week of pay after the employer accepted her resignation and did not allow her to work out the remainder of her notice.

The employer denies the claimant is due any vacation time as she took vacation pay and they retired their employee handbook effective December 2014. Further, they only pay for an employee's notice period if they immediately accept the resignation and do not allow the employee to work out their notice. In this case, they allowed the claimant to stay for over a week before deciding to let her go.

FINDINGS OF FACT

The claimant worked for the employer from June 2014 through December 31, 2015, when the employer terminated her employment. She received a weekly salary of \$750.00.

The claimant argues she is due two weeks of vacation pay as she earned one week in 2014 and two weeks for 2015, and only used one week of vacation in August 2015.

RSA 275:49 III requires that the employer make available to employees in writing, or through a posted notice maintained in an accessible place, employment practices and policies regarding vacation pay. Lab 803.03 (b) requires employers to provide his/her employees with a written or posted detailed description of employment practices and policies as they pertain to paid vacations, holidays, sick leave, bonuses, severance pay, personal days, payment of the employees expenses, pension and all

other fringe benefits per RSA 275: 49. Lab 803.03 (f) (6) requires an employer maintain on file a signed copy of the notification.

The employer noticed the claimant via their employee handbook that “In an employee’s first year they are allowed one week of vacation prorated based on the number of months left in the year” and “Vacation time will not carryover to the following year(s). In unusual circumstances, the supervisor, with the approval of Human Resources, may agree to allow vacation to be carried over to the following year.” They also noticed “one-five years of service received two weeks” per year and “Upon termination of employment for any reason, employee will be entitled to unused annual vacation allowance, prorated to an amount that is based on the amount of time the employee worked in the year. Any vacation time that has been carried over from a prior year will not be paid and will be forfeited.”

The claimant signed an acknowledgement for this written policy on September 15, 2014.

The employer’s argument that the employee handbook had been retired in December 2014 is not persuasive as he continually referred to its contents for his position in this case. Further, he provided no documentation to show he had noticed the claimant the handbook and associated benefits discontinued, as required by RSA 275:49 and Lab 803.03 (b) and (c).

Pursuant to the policy handbook, the claimant forfeited any vacation time in 2014 that had not been used. She accrued and earned two weeks of vacation pay in 2015 as she worked the entire year. She used one week of vacation in August 2015. She has a balance of one week of unpaid vacation pay.

The Hearing Officer finds the claimant proved by a preponderance of the evidence she is due one week of vacation pay under the written policy of the employer, in the amount of \$750.00.

The claimant further argues that pursuant to the employer’s written policy, she is due one weeks’ wages from January 1, 2016 through January 8, 2016, as she provided a two week notice and they did not allow her to work out her notice.

The employer’s written policy states, “Employees are asked to provide a minimum of two weeks written notice prior to the effective date of their resignation. The Company may permit an employee to continue employment during the two-week notice period or accept the resignation immediately. In the event the Company chooses to accept the resignation immediately, the employee will be paid for the remaining portion of the two-week notice period.”

The claimant provided a written resignation to the employer on December 23, 2015, noticing her last day of work would be January 8, 2016. The claimant continued to work until December 31, 2015, when the employer notified her they were accepting her resignation as of December 31, 2015. The claimant ceased employment on December 31, 2015.

The employer allowed the claimant to work for eight calendar days after her written resignation.

Black's Law Dictionary Sixth Edition defines immediate as "present; at once; without delay; not deferred by any interval of time."

Based on the plain reading of the employer's written policy and the definition of immediate, the Hearing Officer finds the claimant failed to prove by a preponderance of the evidence she is due any wages under the employer's written policy.

DECISION AND ORDER

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant failed to prove by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that this portion of the Wage Claim is invalid.

As RSA 275:43 V considers vacation pay to be wages, when due, if a matter of employment practice or policy, or both, and as this Department finds that the claimant proved by a preponderance of the evidence that she is due a portion of the claimed vacation pay, it is hereby ruled that this portion of the Wage Claim is valid in the amount of \$750.00.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$750, less any applicable taxes, within 20 days of the date of this Order.

Melissa J. Delorey
Hearing Officer

Date of Decision: March 2, 2016

Original: Claimant
cc: Employer

MJD/aph